

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JAMES GILLIAM, Individually And On Behalf Of )  
All Others Similarly Situated, )  
Plaintiff, ) Civil Action No. 04cv11600 (RGS)  
vs. )  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )  
BOGATIN FAMILY TRUST, Individually And On )  
Behalf Of All Others Similarly Situated, )  
Plaintiff, ) Civil Action No. 04cv11642 (RGS)  
vs. )  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )  
CYNTHIA A. BENNETT and GUY E. MILLER, )  
Plaintiffs, )  
vs. ) Civil Action No. 04cv11651 (RGS)  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )

---

[Caption continues on next page]

**THE GILLIAM PLAINTIFFS'**  
**MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW**  
**IN FURTHER SUPPORT OF TRI-LEAD COUNSEL AND LIAISON COUNSEL AND**  
**PLAINTIFFS' MOTION FOR CONSOLIDATION**

GHASSAN J. AWALI et al., Individually And On )  
Behalf Of All Others Similarly Situated, )  
Plaintiff, ) Civil Action No. 04cv11709 (RGS)  
vs. )  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )

---

WILLIAM S. GROESCHEL, Individually And On )  
Behalf Of All Others Similarly Situated, )  
Plaintiff, ) Civil Action No. 04cv11735 (RGS)  
vs. )  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )

---

NANCY HAUGEN, MICHAEL F. MAGNAN, )  
KAREN L. MAGNAN, ROSE M. IANNACCONE, )  
PRESLEY C. PHILLIPS, ANDREA M. PHILLIPS, )  
and CINDY SCHURGIN, for the use and benefit of )  
FIDELITY MAGELLAN AND FIDELITY ) Civil Action No. 04cv11756 (MLW)  
CONTRAFUND, )  
Plaintiffs, )  
vs. )  
FIDELITY MANAGEMENT AND RESEARCH )  
COMPANY, et al., )  
Defendants. )

[Caption continues on next page]

---

DAVID O. FALLERT, Individually And On Behalf )	
Of All Others Similarly Situated, )	
	)
Plaintiff, )	Civil Action No. 04cv11812 (RGS)
	)
vs. )	
	)
FIDELITY MANAGEMENT AND RESEARCH )	
COMPANY, et al., )	
	)
Defendants. )	

---

Plaintiffs James Gilliam, Bogatin Family Trust, William S. Groeschel, Ghassan J. Awali, Marina Berti, Valerie x A. Daspit, Arthur G. Denker, Randall C. Heyward, Stanley H. Krupa, Nicole Lenzi, David M. Lucoff, Joseph F. Martingano, Michael S. Mendolia, Patricia K. Munshaw, Brian D. Reese, Jay J. Rupp, Gilbert P. Travis, Jewel R. Travis and David O. Fallert (“Plaintiffs”), by their counsel, hereby move this Court, should the Court deem it necessary, for leave to file the Memorandum of Law in Further Support of Plaintiffs’ Motion for Appointment of Tri-Lead Counsel and Liaison Counsel and Plaintiffs’ Motion for Consolidation (“the Memorandum”) previously filed in all seven of the above-entitled actions on December 2, 2004 [Gilliam Docket No. 66], prior to the status conference before Chief Magistrate Bowler held on December 3, 2004. As grounds therefore, Plaintiffs state that on November 17, 2004, Plaintiffs filed in all of the above actions a Notice of Pending Motions in Related Cases: Plaintiffs’ Motion for Appointment of Tri-Lead counsel and Appointment of Liaison counsel and Motion for Consolidation of Cases. Opposing plaintiffs’ counsel and various defendants responded

with filings entitled “Response” or “Letter/request” without Motions for Leave to File, and Plaintiffs therefore also filed their Memorandum without a Motion for Leave to File.<sup>1</sup>

If the Court deems the Memorandum to have been improperly filed, Plaintiffs now apologize and seek such leave to file and state that the matters contained in the Memorandum are extremely useful to the Court in adjudicating the pending motions.

December 15, 2004

Respectfully submitted,

**MOULTON & GANS, P.C.**

By: /s/ Nancy Freeman Gans  
Nancy Freeman Gans (BBO #184540)  
33 Broad Street, Suite 1100  
Boston, Massachusetts 02109-4216  
(617) 369-7979

*Counsel for Plaintiffs James Gilliam,  
William S. Groeschel, Ghassan J. Awali,  
Marina Berti, Valeriex A. Daspit, Arthur  
G. Denker, Randall C. Heyward, Stanley  
H. Krupa, Nicole Lenzi, David M. Lucoff,  
Joseph F. Martingano, Michael S.  
Mendolia, Patricia K. Munshaw, Brian D.  
Reese, Jay J. Rupp, Gilbert P. Travis, Jewel  
R. Travis and David O. Fallert and  
Proposed Liaison Counsel*

---

<sup>1</sup> *Gilliam* Plaintiffs’ counsel today received a telephone call for a Local Rule 7.1 conference from Ms. Michelle Blauner, Esquire, counsel for the Haugen Plaintiffs, stating that, despite their failure to object at the status conference, the Haugen Plaintiffs plan to file today a Motion to Strike the Memorandum because of Plaintiffs’ failure to file a motion for leave to file. Plaintiffs are, however, wary of starting another briefing cycle on motions that have already been fully briefed. Accordingly, *Gilliam* Plaintiffs hereby request the Court’s permission to file the Memorandum.

**MILBERG WEISS BERSHAD  
& SCHULMAN LLP**

Steven G. Schulman  
Janine L. Pollack  
Kim E. Levy  
Michael R. Reese  
One Pennsylvania Plaza  
New York, New York 10119-0165  
(212) 594-5300

*Counsel for Plaintiff James Gilliam and  
Proposed Tri-Lead Counsel*

**STULL, STULL & BRODY**

Jules Brody  
Aaron Brody  
6 East 45<sup>th</sup> Street  
New York, New York 10017  
(212) 687-7230

*Counsel for Plaintiffs William S.  
Groeschel, Ghassan J. Awali, Marina  
Berti, Valeriex A. Daspit, Arthur G.  
Denker, Randall C. Heyward, Stanley H.  
Krupa, Nicole Lenzi, David M. Lucoff,  
Joseph F. Martingano, Michael S.  
Mendolia, Patricia K. Munshaw, Brian D.  
Reese, Jay J. Rupp, Gilbert P. Travis, Jewel  
R. Travis and David O. Fallert and  
Proposed Tri-Lead Counsel*

**SCOTT + SCOTT, LLC**

Arthur L. Shingler, III  
Wells Fargo Building  
401 B Street, Suite 307  
San Diego, California 92101  
(619) 233-4565

*Counsel for Plaintiff James Gilliam and  
Proposed Tri-Lead Counsel*

**LAW OFFICES OF CHARLES J.  
PIVEN, P.A.**

Charles J. Piven  
Marshall N. Perkins  
The World Trade Center - Baltimore  
Suite 2525  
401 East Pratt Street  
Baltimore, Maryland 21202  
(410) 332-0030

*Counsel for Plaintiff James Gilliam*

**SCHIFFRIN & BARROWAY, LLP**

Marc A. Topaz  
Richard A. Maniskas  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd, Pennsylvania 19004  
(610) 667-7706

*Counsel for Plaintiff Bogatin Family Trust*

**GILMAN AND PASTOR, LLP**

David Pastor (BBO #391000)  
Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, Massachusetts 01906  
(781) 231-7850

*Counsel for Plaintiff Bogatin Family Trust*

**WEISS & YOURMAN**  
Joseph H. Weiss  
Richard A. Acocelli  
551 Fifth Avenue, Suite 1600  
New York, New York 10176  
(212) 682-3025

*Counsel for Plaintiffs William S.  
Groeschel, Ghassan J. Awali, Marina  
Berti, Valeriex A. Daspit, Arthur G.  
Denker, Randall C. Heyward, Stanley H.  
Krupa, Nicole Lenzi, David M. Lucoff,  
Joseph F. Martingano, Michael S.  
Mendolia, Patricia K. Munshaw, Brian D.  
Reese, Jay J. Rupp, Gilbert P. Travis, Jewel  
R. Travis and David O. Fallert*

**LOCAL RULE 7.1(A)(2) CERTIFICATE**

I, Nancy Freeman Gans, hereby certify that on December 15, 2004, I spoke by telephone with the following counsel regarding The Gilliam Plaintiffs' above Motion for Leave to File Memorandum of Law: (1) Michelle H. Blauner, Esquire, Shapiro Haber & Urmy, counsel for the Haugen plaintiffs, who opposes the motion; (2) Harry S. Miller, Esquire, Perkins, Smith & Cohen, counsel for the Bennett plaintiffs, who opposes the motion. I have notified by voice mail: Wm. Shaw McDermott, Esquire, Kirkpatrick & Lockhart, counsel for the Fidelity Funds; John Kiernan, Esquire, Debevoise & Plympton, counsel for the Individual Defendants in the Gilliam, Bogatin Family Trust, Awali, Groeschel and Fallert cases; and James W. Benedict, Esquire, Milbank, Tweed, Hadley & McCloy, LLP, counsel for Fidelity Management and Research Company and FMR Co., Inc., of the filing of this Motion, but also have not been able to reach them.

/s/ Nancy Freeman Gans  
Nancy Freeman Gans

**CERTIFICATE OF SERVICE**

I, Daniel P. Dietrich, hereby certify that I served a copy of the foregoing document upon counsel for all parties by e-mail and/or telefax, to each attorney of record, this 15<sup>th</sup> day of December, 2004.

/s/ Daniel P. Dietrich  
Daniel P. Dietrich